

**Functional Leadership Plan
Office of the General Counsel
NASA Headquarters**

INTRODUCTION

This document sets forth the Office of the General Counsel (OGC) functional leadership plan in support of agency strategic management. This plan reflects the position of the OGC as a critical functional office that provides both functional leadership to the NASA legal community and a wide array of legal services to management across every element of the Agency. This plan details the full range of legal services the OGC provides to the Agency, either directly through client contact or indirectly through guidance and support to the Center legal offices. By working to ensure compliance with applicable personnel, safety, environmental, and other laws and regulations, the OGC plays a vital role in assuring the safety of NASA's people, programs, projects and missions.

MISSION

The OGC at HQ serves as the focal point for establishing Agencywide legal policies and procedures, and for providing legal advice, assistance and related legal services. Within the NASA Management structure, the OGC is a corporate staff office that provides functional leadership within its primary areas of responsibility, staff to the Administrator on all legal matters, and central services to all agency and installation offices.

CODE G FUNCTIONS

The OGC at HQ deals with the entire range of legal issues facing NASA. Attachment 1 to this plan is a list of 27 discrete legal disciplines in which the OGC must be expert in order to support NASA's normal course of business. Not only must the office maintain expertise in all of these areas, it must be able to adapt quickly to changes in laws, regulations, business practices and management approaches. In order to provide effective legal support to the Agency with minimal impact on and disruption to new and ongoing programs, Code G emphasizes the practice of proactive, preventative law—the easiest problem to resolve is the one which does not arise. By the very nature of this activity, the OGC may need to interface with every office – Enterprise, IPO, functional, Center – at any point throughout a program.

In fulfilling these responsibilities under the Strategic Management Plan, OGC activities group roughly as follows:

As the functional lead for several activities, the Office of the General Counsel will:

- establish and disseminate legal policy
- interpret new statutes/cases

- develop and administer the ethics/patent programs
- develop and provide professional leadership, guidance and legal quality standards
- set communication avenues for the legal function
- advocate/evaluate the legal function with Enterprise AA's and Center Directors
- represent the legal function in Agency discussions

Central Services are provided by the OGC to the broadest range of customers. Specifically, Central Services are provided to Center Counsel offices, the Enterprise AA's, the Center Directors and indirectly, the Administrator. The activities include:

- serve as Washington, DC litigation counsel
- provide litigation expertise to the Agency, as needed
- provide formal and informal legal advice to Headquarters clients
- assist in drafting of Agency/Enterprise policy documents when legal issues are implicated
- act as Agency representative before the U.S. Patent and Trademark Office
- advocate and establish communications structure between and among NASA legal offices
- provide overflow/emergency legal support to Centers
- provide expert legal advice to Centers
- act as facilitator among Centers, as needed
- decide internal appeals of claims/FOIA denials

Finally, the OGC also provides significant services as Staff to the Administrator, including:

- perform special projects for Code A
- provide direct advice to Code A
- advocate Agency legal positions to the Administration/Congress

- perform legislative drafting for the Agency
- assist in evaluation of Enterprises/Centers
- act as Agency representative to the Federal Legal Council
- serve as Designated Agency Ethics Official
- represent the Agency in numerous external fora

In meeting its responsibilities, the guiding philosophy of the OGC and the Center Chief Counsel offices has been that the legal offices be proactive and responsive. A centerpiece in acting on this philosophy has been the implementation and expansion of an aggressive and wide-ranging communications plan. This plan contains several elements that tie all members of the Agency legal community together and that allow NASA legal offices to leverage capabilities found throughout the Agency to serve their clients. Key among these are: formal and informal exchanges between Headquarters and the field; establishment and maintenance of the Code G website containing current material and links of significance to all legal offices; regular meetings among legal personnel, including an annual meeting of senior legal staff devoted principally to management issues; an annual Chief & Patent Counsel Conference at which a large part of the Agency legal staff assembles for subject matter updates and training; General Counsel in-put to Center Directors' evaluation of chief counsel, and reciprocal in-put from field counsel on evaluation of the OGC and the associate general counsel at Headquarters; site visits to field offices by the General Counsel and Deputy General Counsel; and regular phone and e-mail contacts among all legal offices. The OGC places a heavy emphasis on fostering a team approach to addressing and resolving all issues.

The OGC communications effort also has a significant outreach component. The General Counsel holds monthly status sessions with several principal client code associate administrators to discuss legal matters related to that code. These meetings have been important information sharing devices that have facilitated problem avoidance and speedy identification and resolution of issues often at substantial savings of resources.

Written policies and guidance play a significant part in the OGC communications program as well. A new system has come on-line within this past year that tracks all Agency litigation and allows OGC to retrieve data on all active cases within the Agency from one centralized data base. Field offices are tied into and have access to this same system, as well as to information posted on the Code G website. Subject matter guidance is routinely promulgated through distribution of materials such as ethics opinion letters, the Space Act Agreements Manual, Patent Licensing Manual, FOIA Appeal letters, memoranda from the General Counsel, as well as decisions and discussions of significant cases and other rulings. Other information is provided through systems such as TechTracs and the litigation tracking system.

Code G Products and Services provided to the Enterprises and the Agency:

In performance of our functions, we provide:

- Legal Advice (HOWI 2030-G001)
- Legal Representation (HOWI 2060-G002)
- Legislative Drafting Services (HOWI 2060-G003)
- Patent Prosecution and Licensing (HOWI 2092-G004)

Code G's Needs and Dependencies on the Enterprises and the Agency:

In order to perform our function, Code G requires:

- Accurate, complete and timely information related to legal matters
- Sufficient program information necessary to support legal matters, legislative drafting, and advocacy
- Resources and staffing support necessary to prepare for and conduct litigation/settlement negotiations
- Resources and personnel necessary to staff and support Center legal offices
- Resources and personnel assignments necessary to staff and maintain a high quality, professional legal staff

Code G ORGANIZATION

The OGC is organized as shown on Attachment 2. The office has a flat organizational structure of a front office and four operating divisions (subcodes) with differing areas of legal expertise. The subcodes are: Code GG—General Law; Code GK—Contract Law; Code GP—Intellectual Property Law; and Code GS—Commercial and International Law. The functions specific to each subcode are as follows:

Code GG—General Law

The mission of Code GG is to ensure that NASA carries out its responsibilities to the American public in compliance with applicable law and regulation and that management makes critical decisions supporting NASA's strategic goals and performance plans in compliance with applicable law and regulation. Code GG is committed to providing high

quality legal products and services when needed by our clients while upholding NASA's core values related to safety, people, excellence, and integrity.

Code GG Goals & Objectives

(1) Functional Leadership

Code GG provides functional leadership in the areas of ethics, fiscal law, environmental law, personnel and labor law, civil rights and equal employment law, information disclosure law, safety and security law, alien residence issues, real and personal property law, memoranda of understanding and other agreements, and other administrative law matters, by providing agencywide policy and standards. The functional leadership role is primarily filled through legal advice and counsel to our clients. Code GG is also responsible for promulgating policy through numerous NASA regulations and internal directives. Code GG provides functional leadership by managing NASA's ethics program in furtherance of NASA's core value of integrity.

(2) Central Services

Code GG provides central services in the areas of legislation, litigation, adjudicating claims, and providing legal advice and review for Headquarters' clients. Code GG drafts NASA's annual authorization bill and other legislative proposals, reviews legislative proposals developed externally for legal sufficiency and agencywide impacts, and reviews testimony and statements of Administration position for consistency with NASA policy and strategic goals. Staff of Code GG represents NASA in litigation in administrative and judicial fora when litigation arises from a Headquarters' activity within Code GG's substantive areas of expertise or when the subject matter is precedent setting. Code GG also adjudicates claims arising from Headquarters' activities, protecting NASA's fisc against unwarranted claims and assuring that meritorious claims are paid. At Headquarters, Code GG provides ethics training, reviews both public and confidential financial disclosure reports, and provides ethics counseling and advice to employees and management.

(3) Staff to the Administrator

Finally, Code GG provides staff to the Administrator by providing legal advice and counsel on issues within its areas of responsibility, representing the Administrator in litigation and administrative hearings, and performing special projects.

Code GG Strategies & Tactics

Code GG fulfills its roles and missions and achieves its goals and objectives through various means:

- Disseminates legal policy and standards through issuance of formal directives and published regulations—

- NPD 1030.1F, Acceptance by Employees of Gifts or Decorations from Foreign Governments and Gifts to Foreign Individuals;
- NPD 1371.1 and NPG 1371.1, Requests for Waivers of the Residence Abroad Requirement for Exchange Visitors Employed by NASA Contractors and Grantees;
- NPD 1900.9C, Financial Disclosure Reports;
- NPD 2010.1B, Court Actions or Proceedings Involving NASA or NASA Employees;
- NPD 2010.2A, Alternative Dispute Resolution;
- NPD 2530.1D, Monitoring or Recording of Telephone or Other Conversations; and
- NPD 7010.1H, Procedures for Processing Material for Inclusion in the NASA Legislative Program
- 5 CFR Part 6901, Supplemental standards of ethical conduct for employees of the National Aeronautics and Space Administration
- 14 CFR 1204.505, Delegation of authority to execute certificates of full faith and credit
- 14 CFR Part 1207, Standards of Conduct
- 14 CFR Part 1209, Subpart 3—Contract Adjustment Board
- 14 CFR Part 1261, Processing of Monetary Claims (General)
- 14 CFR Part 1262, Equal Access to Justice
- 14 CFR Part 1263, Demand for Information or Testimony Served on Agency Employees
- 14 CFR Part 1264, Implementation of Program Fraud Civil Remedies Act of 1986

Disseminates legal policy and standards through formal written opinions and oral advice as well as informally through electronic mail.

Conducts quarterly ethics video teleconferences with Center Chief Counsel.

Participates in annual Chief Counsel's conferences and other NASA program conferences.

Represents NASA legal positions in various external fora such as Office of Management and Budget, Office of Government Ethics (OGE), Department of Justice, Equal Employment Opportunity Commission (EEOC), Office of Special Counsel (OSC), Merit Systems Protection Board (MSPB), Office of Personnel Management, Environmental Protection Agency, Congress, interagency working groups, etc.

Promotes the use of alternative methods of dispute resolution.

Conducts formal training sessions particularly in the area of ethics.

Develops and maintains Code GG Web site as part of larger Office of the General Counsel site to disseminate process, procedures, and information concerning topics within Code GG's areas of expertise.

Performs all functions in accordance with ISO 9001, and is the primary custodian for HOWI 2060-G003.

CODE GK –Contract Law

The mission of Code GK is to provide legal advice, assistance, policy development, and functional oversight to all organizational components of NASA on procurement-related matters. These matters arise out of the award and administration of contracts, grants, and cooperative agreements. Fulfilling these responsibilities falls into the following three major categories:

Code GK Goals & Objectives

(1) Functional Leadership

Code GK provides legal functional leadership concerning contracts, grants and cooperative agreements, areas where NASA spends approximately 85 percent of its budget. This involves policy level interactions with Congress, the General Accounting Office, the Office of Management and Budget, the Office of Federal Procurement Policy, the U.S. Trade Representative, the Office of Science and Technology Policy, the Department of Defense, and the Small Business Administration. Code GK also supports certain critical functions for the Agency, including Headquarters Acquisition Strategy meetings, Headquarters Solicitation Review boards, Source Evaluation Board presentations to selection officials, and the Federal Acquisition Regulation Council deliberations. To provide this support, Code GK drafts statutorily required determinations and findings for the Administrator, significant new or revised procurement policies, and public selection statements for major acquisition. Code GK also plays a principal role in drafting legislation and policy documents that provide needed authority and solutions to significant procurement-related problems. In addition, Code GK reviews, analyzes, and provides advice on procurement-related documents requested under the FOIA to ensure the Agency is being responsive, consistent, and invokes exceptions to release only when justified and appropriate. Code GK also provides functional oversight and support to Field Counsel to ensure an acceptable and desirable level of consistency throughout the Agency on significant, procurement related legal issues.

(2) Central Services

Code GK provides central services by representing the Agency, in conjunction with Center legal counsel, in contract-related litigation, including the following: procurement protests to the General Accounting Office; contract disputes to the Armed Service Board of Contract Appeals and the U.S. Court of Federal Claims; lawsuits filed in Federal courts for temporary restraining orders, injunctions, and other forms of relief; qui tam actions alleging contractor fraud against the Agency; and appeals to the U.S. Court of Appeals for the Federal Circuit from decisions of the Court of Federal Claims or the Armed Services Board of Contract Appeals. Code GK also advises NASA procurement and program officials on new approaches and opportunities for resolving protests and claims by Alternative Disputes Resolution. Code

GK provides intensive advice and legal support to the Associate Administrator for Procurement by providing a full-time, NASA Legal Member to the Defense Acquisition Regulatory Council.

(3) Staff to the Administrator

Code GK provides staff to the Administrator by helping to develop all procurement policy documents, by drafting all procurement-related legislation which the Administrator decides to pursue, by drafting any statutorily required determinations and findings, by proposing significant new or revised procurement policies, by composing source selection statements for major acquisitions, and documenting the basis for certain high-visibility procurement decisions. Code GK also works closely with the Headquarters Office of Legislative Affairs in responding to inquiries from Senators and Representatives concerning NASA procurement matters.

Code GK Strategies & Tactics

Code GK fulfills its roles and missions and achieves its goals and objectives through various means:

Disseminates legal policy and standards through issuance of formal directives and __ published regulations—

- NPD 5101.1D, Requirements for Legal Review of Procurement Matters
- 14 CFR Part 1267, Meritorious Claims Resulting from the Conduct of NASA Functions under 42 U.S.C. § 2473(c)(13)
- 48 CFR Part 1833, Protests, Disputes and Appeals
- 48 CFR Part 1852.228-XX, Liability to Third Parties

Disseminates legal policy and standards through formal written opinions and oral advice as well as informally through electronic mail.

Conducts frequent procurement law teleconferences with Center Chief Counsel.

Participates in annual Chief Counsel's conferences and other NASA program conferences.

Represents NASA legal positions in various external fora such as the Armed Services Board of Contract Appeals, the U.S. Court of Federal Claims, the U.S. Court of Appeals for the Federal Circuit, the General Accounting Office, Congress, and various interagency working groups.

Promotes the use of alternative methods of dispute resolution.

Develops and maintains Code GK Web site as part of the larger Office of the General Counsel site to disseminate process, procedures, and information concerning topics within Code GK's areas of expertise.

Performs all functions in accordance with ISO 9001.

Code GP—Intellectual Property Law

The mission of Code GP is to develop, implement, and administer NASA's intellectual property program and provide functional leadership to Field Center Patent Counsel in the areas of patents, copyrights, trade secrets, technical data and contracts, grants, cooperative agreements, international agreements, and the distribution of computer software. The Office ensures that it carries out its responsibilities in compliance with applicable laws and regulations. It is committed to providing the highest quality legal services to its clients.

Code GP Goals & Objectives

(1) Functional Leadership

The Office provides functional guidance with respect to patent soliciting to ensure that uniform criteria are applied NASA-wide on invention reporting, patent application preparation and filing, and conduct of proceedings before the United States Patent and Trademark Office. In addition, the Office develops and supports the implementation of policies and procedures related to patent and copyright licensing so that uniform criteria are applied NASA-wide and to ensure the maximum beneficial use of patented and copyrighted technology. The Office also develops policies and procedures for the distribution of royalties to inventors, and administers the legal aspects of waiver of the Government's title to inventions made by large businesses under NASA contracts.

(2) Central Services

The Office provides central services in several areas including Department of Justice litigation support, licensing, handling infringement-related administrative claims, reviewing FOIA requests concerning technical data and computer software, filing trademark applications, and reviewing and negotiating intellectual property provisions for cooperative agreements, and domestic and International Space Station Agreements. The Office also responds to congressional inquiries, drafts or comments on proposed legislation and regulations, represents NASA in interagency meetings and negotiations.

(3) Staff to the Administrator

Code GP provides staff to the Administrator by advising, counseling, and negotiating domestic and international Space Act agreements; by responding to congressional inquiries, and answering correspondence concerning intellectual property for the Administrator; by providing policy guidance and specific provisions related to intellectual property for the Federal Acquisition Regulation, the NASA FAR Supplement, and specific contracts. In

addition, the division reviews and processes patent applications for signature by the Administrator or delegatee as required by section 305 of the Space Act.

Code GP Strategies & Tactics

Code GP fulfills its roles and missions and achieves its goals and objectives through various means:

Disseminates legal policies, procedures, and standards through formal directives and published regulations

- NPD 2091.1, Inventions Made by Government Employees;
- NPD 2092.2, Royalties and Other Payments Received by NASA from the Licensing of Patents and Patent Applications; and
- NPG 2092.1, Distribution of Royalties Received by NASA from the Licensing of Patents and Patent Applications.
- Intellectual Property and the International Space Station: Creation, Use, Transfer, and Ownership and Protection

Disseminates legal policy and standards through formal written opinions and oral advice as well as informally through electronic mail.

Conducts monthly teleconferences with Center Patent Counsel.

Participates in annual Chief and Patent Counsel's conferences and other NASA program conferences.

Represents NASA legal positions in various external fora such as Office of Management and Budget, Department of Justice, U.S. Patent and Trademark Office, Department of State, Congress, interagency working groups, etc.

Conducts both formal and informal training sessions particularly in areas of licensing and Space Act Agreements.

Develops and maintains Code GP Web site as part of the larger Office of the General Counsel site to disseminate process, procedures, and information concerning topics within Code GP's areas of expertise.

Performs all functions in accordance with ISO 9001, and is the primary custodian of HOWI 2092-G004.

CODE GS--COMMERCIAL AND INTERNATIONAL LAW DIVISION

The mission of Code GS is to provide legal advice, assistance, legal policy guidance, and functional oversight to all organizational components of NASA in matters involving commercial (non-procurement) and international law, including import and export activities, in support of the Agency's space and aeronautics endeavors. In providing these legal services, Code GS seeks to maintain core NASA values relating to safety, people, excellence and integrity.

Code GS Goals & Objectives

(1) Functional Leadership

Code GS has primary leadership responsibility within the General Counsel's Office for legal matters involving commercial relationships with domestic and foreign entities, including reimbursable use of NASA facilities as well as commercial partnerships with U.S. industry. The Office provides extensive advice and counsel to NASA enterprises and programs, and to the Headquarters Office of External Relations, regarding cooperative relationships with foreign entities, including foreign governments and international organizations. An important aspect of this responsibility is providing functional direction to NASA field center counsel in these areas. Code GS leads a matrixed team of attorneys from all subcodes within the General Counsel's Office to support the Administrator's commercialization initiatives throughout the Agency, ensuring that timely and accurate legal counsel is provided to the Agency's commercialization team.

(2) Central Services

Code GS provides central services by drafting and/or reviewing executive and legislative branch proposals for statutes or regulations affecting NASA commercial/international activities, particularly in respect of matters involving liability or allocation of risk, export control, international relations and technology transfer. The Office provides extensive counsel on general international legal issues, including drafting, review and interpretation of various types of Space Act agreements in support of Agency programs, especially agreements involving cooperative relationships with foreign partners, and participates directly in international negotiations involving significant agency programs. Code GS provides a staff attorney to serve as the Headquarters Export Counsel, providing legal advice to the Headquarters Export Administrator under the NASA Export Control Program. The Office represents NASA in legal and policy matters within various interagency fora, including the White House Office of Science and Technology, the Departments of State, Justice, Commerce, and Transportation, the Office of the U.S. Trade Representative, and in meetings with congressional committee staff, and in the Legal Subcommittee of the United Nations Committee on the Peaceful Uses of Outer Space. In addition, the division drafts, reviews, and interprets agency policy statements, regulations, and the Space Act in order to further NASA's strategic goals.

(3) Staff to the Administrator

Code GS attorneys draft final agency decisions involving appeals filed under the Freedom of Information Act, issued by the Associate Deputy Administrator. The Office also provides litigation support to U.S. Attorneys' offices in cases involving judicial review of FOIA decisions. Code GS performs numerous special projects of interest to the Administrator, especially in the areas of privatization and commercialization. Code GS represents the Office of the General Counsel as a member of the Administrator's special team handling Agency commercialization initiatives.

Code GS Strategies & Tactics

Code GS fulfills its roles and responsibilities and achieves its goals and objectives through a variety of means:

Disseminates legal policy and standards through issuance of formal directives and published regulations—

- NPD 1050.1F, Delegation of Authority to Conclude Space Act Agreements;
- NPG 1050.1, Procedures and Guidelines: Space Act Agreements Manual
- 14 CFR Part 1217, Duty-Free Entry of Space Articles
- 14 CFR Part 1214.XX, International Space Station, Crew Code of Conduct

Supports the conduct of export control training for Agency personnel.

Develops and maintains Code GS Web site as part of the larger Office of the General Counsel site to disseminate process, procedures, and information concerning topics within Code GS's areas of expertise.

Performs all functions in accordance with ISO 9001.

Code G Planned and Ongoing Functional Initiatives

Initiatives Meeting the Significance Threshold of the Strategic Management Handbook

None

Minor Initiatives Planned for Operational Improvements

Creation of annotated version of the Space Act in electronic format.

Creation of electronic database of NASA legal research available to all NASA attorneys.

Metrics

General Discussion

Establishment of meaningful metrics for a legal office is difficult and complex. Since the legal office exists as a service provider to all Agency officials and organizations, the best metric of the legal office's performance is that the Agency's programs are accomplished without undue interference from legal problems. Avoidance of such problems is the very heart of the preventative law philosophy of the OGC. Since it is hard to count problems that have been avoided by adherence to early legal advice, obvious metrics, such as number of procurement protests won and lost, amount of litigation, and the like have serious limitations and the potential to motivate undesirable behavior. It is easy to increase the proportion of cases that you win in litigation by becoming much more conservative and adopting a risk adverse philosophy. However, this is inconsistent with the mission of NASA, the principal civilian R&D agency in the U.S. Government. Thus, use of won-lost statistics as a metric is not appropriate. Neither is a metric based on processing time of action items received. This metric motivates an office to treat a matter in a perfunctory way, passing any dispositive action off to another office simply to get it off the incoming log. The desired result is the resolution of a problem, it is not the closing of an action. Problem resolution often requires multiple offices working together to reach consensus. The need for and overall effectiveness of such team efforts is very difficult to reduce to an understandable metric.

One possible exception to the lack of objective, measurable metrics for the legal office may lie in the patent program. The number of patents applied for is a function of the disclosures of the Agency's inventors, but the number of patents obtained when compared with the number of applications may indicate the validity of the decision to seek patent protection for a given technology and the quality of the patent application and prosecution. In addition, the number of licenses granted and royalty income received give some indication of the value placed on the Agency's technology by the private sector.

Representative Metrics

Patent, Patent Licensing, and Royalty statistics: See Attachments 3-5.